



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Bickel et al.
Appl. No. : 09/881,237
Filed : June 15, 2001
Title : The Snap Bat – A Training Aid For Baseball/Softball Hitting Instruction

Gr./A.U. : 3711
Examiner : N. Legesse

Docket No. : BAAS5002AP

I hereby certify that this paper is being deposited this date with the U.S. Postal Service as Express Mail in an envelope addressed to: Box DAC, Assistant Commissioner for Patents, Washington, D.C. 20231


Rick Owen

Date: March 10, 2003
EXPRESS MAIL NO.: EV195212615US

PETITION TO REVIVE APPLICATION UNDER 37 CFR §1.137(b)

Box DAC
Assistant Commissioner of Patents
Washington, DC 20231

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MAR 13 2003

OFFICE OF PETITIONS

Sir:

This is a Petition to revive an application abandoned for failure to timely respond to an Office Action under 37 CFR §1.134, where the failure to timely respond was unintentional within the meaning of 37 CFR §1.137(b). The basis for the Petition is that the abandonment was unintentional because the co-inventor responsible for the business affairs related to the patent application was handling the prosecution of the patent application pro se and was unaware of the filing deadline and therefore did not timely respond to the outstanding Office Action.

A check for \$650.00 representing the \$650.00 small entity Petition Fee under 37 CFR 1.17(m) accompanies this Petition. The Commissioner is hereby authorized to charge any additional fees or credit any overpayment on account of this Petition to Deposit Account No. 15-0490 of Olive & Olive, P.A. Submitted below is a statement supporting the argument that the entire delay was unintentional on the part of the co-inventor, Mr. Mark Goodwillie. Supporting

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Declarations are also attached as noted below. Also submitted is the required response to the Office Action.

STATEMENT

Mr. Mark Goodwillie is a co-inventor along with Mr. William Bickel of the named invention referenced above. By mutual agreement between the co-inventors, Mr. Goodwillie prepared the patent application and agreed to be responsible for its prosecution. All correspondence was directed to his attention at his company, Basic Allstar Training Systems, Inc. Mr. Goodwillie prepared the patent application based on information he reviewed in the U.S. PTO publication "A Guide to Filing a Utility Patent Application." He did not seek any outside legal assistance in the preparation of the patent application. Mr. Goodwillie is the co-inventor responsible for handling all of the business affairs related to the patent application as well as for responding to the U.S. PTO in patent prosecution.

The U.S. PTO mailed the first Office Action, dated May 17, 2002, to Basic Allstar Training System, Inc. ("BATS, Inc."). Mr. Goodwillie received this Office Action at BATS, Inc. The six-month period to respond expired on November 17, 2002, unbeknownst to Mr. Goodwillie. In reviewing the above-cited PTO publication used by Mr. Goodwillie in the preparation of the application, Mr. Goodwillie did not note any deadlines in responding to this first U.S. PTO Office Action and was therefore unaware of the requirement, notwithstanding the attached Office Action Summary Page noting the Shortened Statutory Period for reply. Mr. Goodwillie did contact the law firm of Olive and Olive, P.A in early 2002 regarding an infringement matter but did not retain the firm at that time. He later consulted the law firm of Olive and Olive, P.A on July 1, 2002 when the response in this matter was pending. The law firm of Olive and Olive P.A. noted the Shortened Statutory Response deadline date of August 17, 2002 but the firm was never retained to respond to the Office Action. Mr. Goodwillie met with an attorney at the law firm of Olive and Olive, P.A., but only consulted the law firm about how to proceed with a response to the Office Action. A discussion between Mr. Goodwillie and an attorney at the law firm of Olive and Olive, P.A. was held during July 2002 and the attorney followed up with a letter to Mr. Goodwillie asking if he was going to proceed and retain the firm to prepare a response to the Office Action. Mr. Goodwillie did

not respond to the letter. However, Mr. Goodwillie gave every impression to the law firm of Olive and Olive, P.A. that there was intent to file a response. The law firm of Olive and Olive, P.A. was under the impression at that time that Mr. Goodwillie would personally respond to the Office Action.

Mr. Goodwillie subsequently called the law firm of Olive and Olive, P.A. on January 15, 2003 to inquire about retaining the firm to respond to the Office Action. On that date an attorney at the law firm of Olive and Olive, P.A. alerted Mr. Goodwillie that the application had become abandoned and that it would be necessary to file a Petition to Revive the application. It was only then, during this conversation, that Mr. Goodwillie realized the response had been due on or before November 17, 2002. He indicated that he did not realize it had been due by that time. When Mr. Goodwillie did not retain the law firm of Olive and Olive, P.A. to respond to the Office Action, Mr. Goodwillie indicated he did not know about the deadline for responding to the Office Action.

The law firm of Olive and Olive, P.A. has inquired into the underlying facts and circumstances surrounding this unintentional failure to respond to the Office Action and the facts are as presented above and in the accompanying statements from Mr. Goodwillie and Mr. Bickel. We respectfully submit this Petition to Revive the above referenced application as unintentionally abandoned. This Petition has been instituted in as timely manner as possible given the circumstances outlined above and the recent notification to Mr. Goodwillie that the application had become abandoned.

The supporting statement of Mr. Mark Goodwillie is attached as Exhibit 1. Mr. William Bickel's statement as to the agreement between the co-inventors regarding the filing and handling of all transactions with the U.S. Patent and Trademark Office is attached as Exhibit 2.

CONCLUSIONS

The foregoing is based on the records within the office of the undersigned attorney on why the Response to the Office Action was not timely submitted. Applicants respectfully submit that the failure to submit the Response to the Office Action was unintentional, and that such evidence supports Applicants' position that the failure to submit the Response to the Office Action was unintentional within the meaning of 37 CFR §1.137(b).

09/881,237.

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For all of the above reasons, revival of the above-entitled application as unintentionally abandoned within the meaning of 37 CFR § 1.137(b) is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew T. Prokopetz". The signature is fluid and cursive, with the first name "Andrew" being the most prominent part.

Andrew T. Prokopetz
Attorney for Applicants
Registration No. 52,134

Customer No. 029889

919/683-5514

Dated: March 10, 2003

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EXHIBIT 1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Bickel et al.
Appl. No. : 09/881,237
Filed : June 15, 2001
Title: The Snap Bat – A Training Aid For Baseball/Softball Hitting Instruction

Gr./A.U. : 3711
Examiner : Nini F. Legesse

Docket No. : BAAS5002APBO

Declaration of Mr. Mark Goodwillie

Box DAC
Assistant Commissioner for Patents
Washington, DC 20231

Sir:

1. I am a video producer at Basic Allstar Training Systems, Inc. as well as the company's registered agent.
2. I am a co-inventor, along with Mr. William Bickel, of the referenced application. I am not an attorney. I have no prior experience with patent applications.
3. By mutual agreement with Mr. William Bickel, we agreed that I would be responsible for the preparation, filing and handling of all correspondence with the U.S. Patent and Trademark Office.
4. I prepared the application and filed it on June 15, 2001.
5. I received the Office Action from Examiner, Nini F. Legesse, dated May 17, 2002.
6. Although I consulted the law firm of Olive and Olive, P.A. as to how to respond to the Office Action, I did not retain the law firm to prepare a response to the Office Action during the pendency of the Office Action and I do not recall discussing a date by which a response had to be filed with the U.S. Patent and Trademark Office.

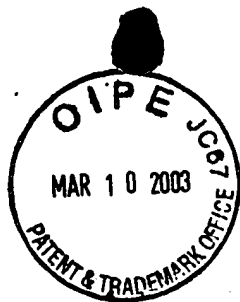
7. I did not realize that a response had to be filed within 6 months of the date of the Office Action or it would become abandoned.
8. I had every intention of filing a response to the Office Action and continue the prosecution of this application and did not intend to abandon the application.
9. I hereby declare that all statements made herein of my own knowledge are true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issue thereon.

Executed on 2/28/03, 2003


Mark Goodwillie

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EXHIBIT 2

PATENT

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Declaration of Mr. William Bickel

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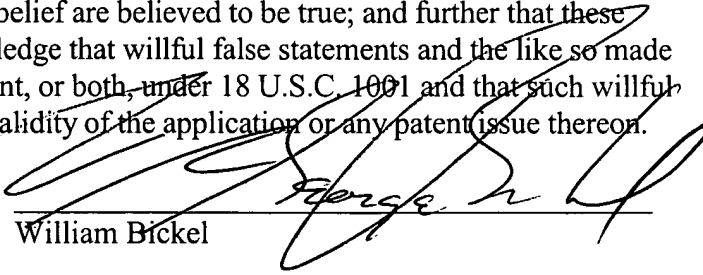
OFFICE OF PETITIONS

Box DAC
Assistant Commissioner for Patents
Washington, DC 20231

Sir:

1. I am William Bickel, the founder and President of Basic Allstar Training System, Inc.
2. I am a co-inventor, along with Mr. Mark Goodwillie of the referenced application. I am not an attorney and have no prior knowledge of patent procedure.
3. By mutual agreement with Mr. Mark Goodwillie, we agreed that he would be responsible for the preparation, filing and handling of all correspondence with the U.S. Patent and Trademark Office.
4. It was my intent to continue prosecution of this referenced patent application and I had no intent to abandon this application
5. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issue thereon.

Executed on 2/28/03, 2003


William Bickel